



The Senate of
The State of Texas
Austin 78711

KEN ARMBRISTER

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October 1, 1992

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RQ-450

Ms. Madeleine Johnson
Chief, Opinions Committee
Attorney General's Office
P. O. Box 12548
Austin, Texas 78711-2548

Dear Ms. Johnson:

Enclosed please find correspondence exchanged between Mr. William R. Volk, representing South Texas Race Association, and Mr. David J. Freeman, Executive Secretary of the Texas Racing Commission, regarding the issue of payment of fees addressed in Section 305.71 of the Commission's rules.

I am respectfully requesting an Attorney General's opinion regarding South Texas Race Association's application, and, specifically, whether the Texas Racing Commission may require the Association, a Class 2 licensee, to pay the \$10,000 annual fee provided for under Section 305.71.

I would appreciate your attention to this matter.

Please feel free to contact Freddy Warner, Legislative Counsel for my office, if you have further questions.

Sincerely,

Ken Armbrister
State Senator

MB
FD# 17533
file # ML-17533-92

RECEIVED
OCT 5 1992
LEGISLATIVE COUNSEL

received
9-22-92

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TEXAS RACING COMMISSION

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FAX (512) 794-8478

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DAVID J. FREEMAN
Executive Secretary

September 24, 1992

Mr. William R. Volk
Jenkins & Gilchrist
2200 One American Center
600 Congress Avenue
Austin, Texas 78701

Dear Mr. Volk:

I write in response to your recent letter regarding South Texas Race Association ("STRA") and I certainly appreciate your client's position. With all due respect, however, I must disagree with your conclusions. There is no question that the Texas Racing Commission is authorized to charge its racetrack licensees an annual fee. (Texas Racing Act §5.01; §6.18) There is also no question but that STRA holds a racetrack license, albeit a "reinstated" one. You assert that the Commission's annual fee that is explicitly authorized by statute is really a "renewal" fee. You also assert that the Commission is prohibited from suspending a reinstated license for refusal to pay the annual fee. By implication, then, you intimate that the Commission is prohibited from disciplining an association holding a reinstated license for a violation of one of its rules. Surely this was never the intent of the Legislature, given the highly regulated nature of the pari-mutuel racing industry.

Legal theory aside, though, it is important for you to understand the nature of the Texas Racing Commission's funding. This agency receives no General Revenue appropriation; it is entirely funded by fees it charges to its racetrack licensees and occupational licensees. Because §7.05 of the Texas Racing Act requires the Commission to base occupational licensing fees on the relative incomes of those licensees, the amount of money that can be raised through those fees is limited. The Commission must look to the racetrack licensees for the bulk of its operating revenue.

Although STRA is not yet an operating racetrack, the Commission has not historically considered such racetracks to be exempt from the payment of annual fees needed to fund the regulatory services of the agency. To this point, I have been enforcing the Commission's rules as written and as I believe the Commission intends for them to be enforced. To ensure complete fairness on this issue, however, I will forward your correspondence and this response to the Commission and I will recommend that you be given the opportunity to appear before the Commission at its November meeting to make your case for an exemption or a rule change. If you wish to submit anything further to the Commission in writing in advance of the November meeting, please file it not later than 5:00 p.m. on October 21.

Very Truly Yours,

David J. Freeman

David J. Freeman
Executive Secretary

DJF/pcc:ng

Jenkins & Gilchrist

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WILLIAM R. VOLK
(512) 499-3812

September 15, 1992

Mr. David J. Freeman
Executive Secretary
Texas Racing Commission
P. O. Box 12080
9420 Research Boulevard
Suite 200
Austin, TX 78711-2080

Hand Delivery

Dear Mr. Freeman:

We represent South Texas Race Association (the "Association"). We have reviewed the provisions of Section 6.19 of the Texas Racing Act, Tex. Rev. Civ. Stat. Ann. art. 179e, et seq (the "Act"), and §305.71 of the Texas Racing Commission Rules as they apply to the Association. We believe that Section 6.19 precludes the Texas Racing Commission from requiring the Association to pay the \$10,000 annual fee provided for under §305.71 of the Commission's Rules.

Section 6.19 was added to the Act in House Bill 2263 adopted by the Legislature in May, 1991. Subsection (b) of Section 6.19 provides that "[a] licensee to which this section applies must apply for reinstatement not later than January 1, 1992. *The Commission may not require the licensee to pay an application or renewal fee.*" (Emphasis added).

On September 12, 1991, the Racing Commission requested the opinion of the Attorney General regarding the application of Section 6.19 to Class 2 licensees, including the Association. In Opinion No. 92-001, dated January 24, 1992, the Attorney General concluded that Section 6.19 was a remedial statute and should be liberally construed, citing *Burch v. City of San Antonio*, 518 S.W.2d 540, 544 (Tex. 1975). The Opinion states that "[a] remedial statute is to be accorded the most comprehensive and liberal construction of which it is susceptible. It should on no account be given a narrow, technical construction that would defeat the very purpose for which it was enacted. *City of Mason v. West Texas Utilities Co.*, 237 S.W.2d 273, 280 (Tex. 1951)."

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Mr. David J. Freeman

September 15, 1992

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The Association applied for reinstatement of its Class 2 racetrack license prior to January 1, 1992 in compliance with Section 6.19. By letter dated January 31, 1992, the Commission notified the Association that its license was reinstated "effective immediately." Under the provisions of Section 6.19(e), the Association's license will expire on January 31, 1994. Section 6.19(d) provides that the Commission may not revoke or suspend the license prior to January 31, 1994, except for the grounds specified in Section 6.19(d). These grounds do not include a licensee's failure to pay fees to the Commission. This is consistent with the language of Section 6.19(b) which precludes the Commission from requiring a licensee under a reinstated license to pay an application or renewal fee.

Despite the language of Section 6.19(b), the Commission would require the Association to pay a \$10,000 annual fee. In a letter to the Association dated March 17, 1992, you assert that the Commission is entitled to collect fees from the Association under Section 6.18 of the Act. That Section authorizes the Commission to prescribe an annual fee to be paid by each racetrack licensee.

In taking this position, the Commission appears to be making a technical distinction between a "renewal" fee and an "annual" fee. No substantive difference exists between the renewal fee prohibited under Section 6.19 and the annual fee the Commission now attempts to collect from the Association.

At the time H.B. 2263 was adopted by the Legislature, a Class 2 racetrack license had a term set by the Commission not to exceed three years. Licensees were required to pay "annual renewal fees" under §305.71 of the Commission's Rules. H.B. 2263 amended the Act to provide that licenses issued under the Act are perpetual. H.B. 2263 also added Section 6.18(b), authorizing the Commission to prescribe an annual fee to be paid by each licensee.

After the effective date of Sections 6.18 and 6.19, the Commission amended §305.71 of its Rules. Prior to this amendment, §305.71 provided for an annual renewal fee for horse track licensees. As applied to a Class 2 licensee, this renewal fee included a base of the \$10,000 and an additional amount based on the daily handle of the association.

The amendment to §305.71 changed the name of the "annual *renewal* fee" to "annual fee." The structure, amount and frequency of payment of the fee were not changed, however.

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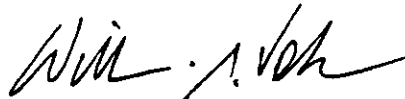
Mr. David J. Freeman
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Like the annual *renewal* fee, the annual fee includes an annual base fee and a daily fee. The base fee for a Class 2 racetrack is \$10,000 -- the same as the annual renewal fee.

Section 6.19 was intended to provide limited and temporary relief for licensees which had encountered problems in obtaining adequate financing. It is entirely consistent with this purpose to exempt a reinstated licensee from paying fees to the Commission while it seeks to obtain financing. This purpose would be defeated if the Commission could require a reinstated licensee to pay the same fee as any other racetrack licensee by simply changing the name of the "annual renewal fee" to "annual fee."

On behalf of the Association, we would urge the Commission to reconsider its position that the Association can be required to pay this annual fee and, if necessary, that the Commission seek clarification from the Attorney General regarding the application of Opinion No. 92-001 to this question.

Sincerely,



William R. Volk

WRV/dw

cc: Mr. Leonard H. Von Dohlen III
Senator Kenneth Armbrister